

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of **Joseph HARBAUGH**

Confirmation No.: **4205**

Application No.: **09/826,690**

Examiner: **CASLER, Traci L.**

Filed: **April 5, 2001**

Group Art Unit: **3629**

Attorney Docket No.: **6994-1**

Customer Number: **30448**

For: **METHOD FOR ADMITTING AN ADMISSIONS APPLICANT INTO AN
ACADEMIC INSTITUTION**

DECLARATION UNDER 37 C.F.R. §1.132 BY RICHARD A. MATASAR

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Commissioner for Patents
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I, Richard A. Matasar, do declare:

1. I hold a Bachelor of Arts degree and a Juris Doctor Degree from the University of Pennsylvania. I began my legal career in public service as a law clerk to the Honorable Max Rosenn, of the U.S. Court of Appeals for the Third Circuit. Since 1980, I have been continuously employed as a law school Dean, law school professor, or both. Before assuming my current position, I served as Dean of the Chicago-Kent School of Law from 1991-96 and as Dean of the University of Florida Frederic G. Levin College of Law from 1996-1999. Since 1999, I have served as the Dean of New York Law School.

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2. I have reviewed the claims pending in the Office Action mailed May 22, 2008. The subject matter of the claims can be summarized by claim 23, which recites:

23. (currently amended) A method for admission to a graduate school, said method comprising the steps of:

identifying a pool of standardized test takers who possess a GPA and standardized test score that are insufficient to gain regular admission to a graduate school or, wherein the identifying step is enabled by a computer product;

offering a program for admission to the graduate school to the identified test takers, wherein the program for admission includes an abbreviated academic program;

providing instruction in at least one academic discipline to the test takers who accept the offer to participate in the program for admission;

subjecting test takers in the program for admission to at least one examination during the abbreviated academic program, each test taker in the program for admission achieving a score on the at least one examination, wherein each score is assigned using [[a]] an absolute calibrated grading process; and

admitting into the graduate school those test takers who achieve a score on said at least one examination which exceeds a pre-determined score deemed to correlate with academic success at the graduate school.

The admissions process set forth in the claims is unique and unexpectedly serves to identify students who "overachieve" in relation to their Law School Admissions Test (LSAT) score and undergraduate grade point average (UGPA). It is well known in the law school community that an individual's LSAT score indicates only that the law school performance of the individual will fall within a given distribution of student's with that same LSAT score. Thus, individuals achieving the same LSAT score may have vastly different levels of academic performance once they are admitted to law school.

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For example, studies indicate that, once admitted to law school, almost 40% of students with LSAT scores of 145 (27th percentile) will outperform some students with LSAT scores of 155 (67th percentile). However, prior to the claimed method, there was simply no means of predicting which 40% of the students scoring a 145 will exhibit this elevated level of performance in law school. See P. Shelton, "LSAT: Good – But Not That Good," LAW SERVICES REPORTER, Sept./Oct. 1997 at 2. The LSAT is the most predictive test in the standardized testing industry, so this issue is even more problematic when other, less predictive, standardized tests are employed in the admissions process.

Although this problem was widely recognized prior to 2001, when the instant application was filed, no one had developed a method of identifying those individuals who would succeed once admitted to law school despite an LSAT score indicating that the student would not succeed once admitted to law school. For the reasons set forth below, it is my firm opinion that the claimed method solves this problem despite the failure of others, including the Law School Admissions Counsel (LSAC), which administers the LSAT.

3. New York Law School has licensed the subject matter of the claimed admissions process for five years and has been monitoring the program closely. In fact, the first class of graduates admitted through the claimed program graduated in June 2008. It is noteworthy that these graduates include two students admitted in 2004 who participated in New York Law School's part-time program, which requires four-years to complete.

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The number and status of students admitted to New York Law School through the claimed program since 2004 is as follows:

Year	Students Participating	Students Admitted	Status of Admitted Students
2004	14	3	2 graduated June 2008 1 dismissed (academic reasons)
2005	9	4	3 graduated June 2008 1 enrolled in part-time program
2006	17	7	7 active students
2007	18	6	6 active students
2008	26	17	To Be Determined

Prior to addressing the academic performance of these students once admitted to New York Law School, it is important to compare their LSAT scores and UGPAs to the averages for students granted regular admission to New York Law School. For example, in 2007, students admitted to New York Law School had an average LSAT score of 154 and an average UGPA of 3.29 out of 4.00. Students admitted through the claimed program had an average LSAT score of 146 and an average UGPA of 3.28 out of 4.00. Thus, based solely on their academic qualifications, LSAT and UGPA, the students admitted through the claimed program would have been expected to perform substantially worse academically than regularly admitted students.

In contrast to these low expectations, ten of the twenty students who have completed their first year at New York Law School achieved a first year GPA of at least 3.0 out of 4.0. This is particularly impressive considering that the mean GPA for the first year class is approximately 2.8 out of 4.0. Thus, the students admitted using the claimed method achieved academic results that were substantially better than expected. In other words, the program has successfully identified students performing at the high end of the curve for their respective LSAT score.

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Overall, 36 of the 37 students admitted through the claimed admissions program are still enrolled. This equates to an attrition rate of less than 3%. Even if only those students admitted who have completed two years at New York Law School are considered, the attrition rate of those students is only 7% (1 out of 14). This is significantly less than New York Law School's average attrition rate of approximately 15%.

4. New York Law School has licensed the claimed method from Nova Southeastern Law Center each year since 2004. Under the license, up to 37 students who would not otherwise be admitted by New York Law School because of insufficient academic qualifications (LSAT, GPA, etc.) are allowed to participate in the claimed method as administered by Nova Southeastern Law Center. The cost for the license is \$35,000 each year. Because of the substantial cost, New York Law School closely scrutinizes the benefits of the claimed program. Year-after-year New York Law School has decided that the unique features of the claimed admissions method provide a substantially improved admissions method that justifies this substantial cost by identifying students with insufficient academic qualifications for admission to New York Law School who perform at or above the level of students with significantly better academic qualifications.

5. In conclusion, it is my opinion that the claimed admissions method is superior to other admissions methods for identifying students with insufficient academic qualifications who will succeed, and thrive, once admitted to a law school. Based on the results of our first

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graduating class, it is clear that students achieving a given LSAT score, who succeed in the claimed method perform at the high end of students achieving that LSAT score. It is on the basis of these surprising results and the unique features of the claimed method that the New York Law School has spent \$175,000, to date, to license the claimed admissions program from Nova Southeastern Law Center. Based on these results, New York Law School plans to continue licensing the program for the foreseeable future.

6. I further state that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with my knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under §1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: 11/12/08



Richard A. Matasar